



1601 N. Tucson Blvd. Suite 9
Tucson, AZ 85716-3450
Phone: (800) 635-1196
Hotline: (800) 419-4777

Association of American Physicians and Surgeons, Inc.
A Voice for Private Physicians Since 1943
Omnia pro aegroto

Cicero's Prognosis

-- by --

THE HONORABLE MILLARD F. CALDWELL
Justice - Supreme Court
Tallahassee, Florida

Presented at the 22nd Annual Meeting of the Association of American Physicians and Surgeons, Inc.

October 7-9, 1965, Columbus, Ohio

Reprinted March, 1996

The Roman Republic, the foremost power of its day, had reached its zenith. Its leadership had attained unbounded wealth and unstinted power. The rulers were intolerant of restraint, indifferent to the demands of the middle class, and contemptuous of the Constitution which was designed to curb their ambitions. The time was some 70 years before the birth of Christ.

Young Marcus Tullius Cicero, then a student of law under old Scaevola, the eminent lawyer of his day, was just about to suffer his first great disillusionment with grasping government. Rome, by force of arms, guile and trickery, dominated the world. Its citizens had grown slick and fat, careless of their rights, and had fallen prey to the ruthless politicians who craved more and ever more power and riches.

Young Cicero's first client was a substantial man of business - a man of integrity who trusted his government and his fellow man. But he was a rich man and, because powerful men of government coveted his wealth, he was the victim of bureaucratic chicanery. Young Cicero, retained to plead his cause, submitted documentary proof of his client's innocence to the Judges, confident that justice would prevail.

But for some reason, his case was not going well. He consulted with his great friend and mentor, Scaevola, telling him what course he had followed, and asked why he had failed. Scaevola was disgusted - he slammed the table and, leaning toward Cicero, shouted, "Imbecile! Of what use are records presented to tribunes, consuls, or senators if the government is determined to rob and destroy a man who had displeased them, or who possesses what they want? Have I truly wasted all these years on such an idiot as this Marcus Tullius Cicero!"

Does that have the familiar ring of 1965 and the current raids of government on your substance and your rights?

Nevertheless, Cicero, before the august Senate, pleaded his client's defense against confiscatory taxation, saying "we are taxed in our bread and our wine, in our incomes and our investments, on our land and on our property, not only for base creatures who do not deserve the name of man, but for foreign nations, for complacent nations who will bow to us and accept our largesse and promise us to assist in the keeping of

the peace - these mendicant nations who will destroy us when we show a moment of weakness or our treasury is bare. We are taxed to maintain legions on their soil, in the name of law and order and the Pax Romana, a document which will fall into dust when it pleases our allies and our vassals. We keep them in precarious balance only with our gold. Is the heart-blood of our nation worth these? Shall one Italian be sacrificed for Britain, for Gaul, for Egypt, for India, even for Greece, and a score of other nations? Were they bound to us with ties of love, they would not ask our gold. They would ask only our laws. They take our very flesh, and they hate and despise us. And who shall say we are worthy of more?"

Does that sound like 1965 and the billions we are pouring out to such as Nasser and Tito and their ilk?

Cicero did not save his client. But he did live to argue the cause of honest government and to talk with Sulla, the Dictator, about integrity and fair dealing. Sulla had little faith in the people. He believed them too deeply interested in their own welfare to concern themselves, too timid to stand up for their rights. He told Cicero the middle class, the lawyers, the physicians, the bankers, and the merchants would make no sacrifices. He said none of your lawyers will challenge the lawmakers and cry to them, "This is unconstitutional, an affront to a free people, and it must not pass!" He asked "Will one of these, your own, lift his eyes from his ledgers long enough to scan the Twelve Tables of Roman Law, and then expose those who violate them and help to remove them from power, even if it costs their lives? These fat men. Will six of them in this city, disregarding personal safety, rise up from their offices and stand in the Forum, and tell the people the inevitable fate of Rome unless they return to virtue and thrift and drive from the Senate the evil men who have corrupted them for the power they have to bestow?"

Does that sound like 1965 and our indifference to government? Does it remind you of our preoccupation with our personal affairs and our unwillingness to "rock the boat?"

Rome continued to decay. The ambitious were fattening upon its bones. The liberties of the people were lifted one by one in the name of emergencies or traded in on benefits. Catiline, brilliant, uninhibited, and evil, was pressing his suit for leadership and, in his course, curtailing the rights of all those who disagreed.

Cicero, in his Second Oration before the Senate, had this to say: "Too long have we said to ourselves 'intolerance of another's politics is barbarous and not to be countenanced in a civilized country. Are we not free? Shall a man be denied his right to speak under the law which established that right?' I tell you that freedom does not mean the freedom to exploit law in order to destroy it! It is not freedom which permits the Trojan Horse to be wheeled within the gates * * *. He who is not for Rome and Roman Law and Roman liberty is against Rome. He who espouses tyranny and oppression and the old dead despotisms is against Rome. He who plots against established authority and incites the populace to violence is against Rome. He cannot ride two horses at the same time. We cannot be for lawful ordinances and for an alien conspiracy at one and the same moment."

Does that sound like 1965 and its government-sponsored demonstrations?

Cicero continued: "Though liberty is established by law, we must be vigilant, for liberty to enslave us is always present under that very liberty. Our Constitution speaks of the 'general welfare of the people.' Under that phrase all sorts of excesses can be employed by lusting tyrants to make us bondsmen."

Does that sound like 1965 and usurpation by the Supreme Court in the name of "the general welfare?"

As the years went by Cicero continued his struggle, he became Consul and, for a time, stopped waste and thievery. But the people again grew careless, weary of well doing, and the avaricious and the corrupt politicians moved in and sought to banish Cicero. Once again he appeared before the Senate, but this time to plead his own cause. He said "The Senate, in truth, has no right to censure me for anything, for I did but my duty and exposed traitors and treason against the State. If that is a crime, then I am indeed a criminal."

Crassus, Caesar and Pompey were present. He turned and looked at them, but their faces were shut against him. His smile was sad as he said to them, "You have succeeded against me. Be it as you will. I will depart * * *." He then told the Senate: "For this day's work, lords, you have encouraged treason and opened the prison doors to free the traitors. A nation can survive its fools, and even the ambitious. But it cannot survive treason from within. An enemy at the gates is less formidable, for he is known and he carries his banners openly against the city. But the traitor moves among those within the gates freely, his sly whispers rustling through all the alleys, heard in the very halls of government itself. For the traitor appears no traitor; he speaks in the accents familiar to his victims, and he wears their face and their garments, and he appeals to the baseness that lies deep in the hearts of all men. He rots the soul of a nation; he works secretly and unknown in the night to undermine the pillars of a city; he infects the body politic so that it can no longer resist. A murderer is less to be feared. The traitor is the carrier of the plague. You have unbarred the gates of Rome to him."

Does that sound like 1965 and the subversives in high places who have been exposed and those who are not yet exposed?

Cicero was exiled from Rome but not from his conscience. He continued to plead the cause of honest government. But the people he pleaded for were not concerned. His friends, the lawyers, the doctors, and the businessmen told him: "We do not meddle in politics. Rome is prosperous and at peace. We have our villas in Caprae, our racing vessels, our houses, our servants, our pretty mistresses, and our comfort and treasures. We implore you, Cicero, do not disturb us with your lamentations of disaster. Rome is on the march to the mighty society, for all Romans."

Does that sound like 1965 and some of the people you know and meet in your day-to-day walks of life?

Cicero was in despair. He began to write his book *De Legibus* but Atticus, his publisher, asked, "But who will read it? Romans care nothing for law any longer, their bellies are too full."

And then, later, Brutus, the long-time sycophant of the ambitious Caesar, came to his senses and went to Cicero with his plea that something be done to save the nation. He confessed his error, he said he had believed in Caesar, he had believed he would restore the public, but that he has betrayed his trust.

Cicero's bitter reply was "Do not blame Caesar, blame the people of Rome who have so enthusiastically acclaimed and adored him and rejoiced in their loss of freedom and danced in his path and gave him triumphal processions and laughed delightedly at his licentiousness and thought it very superior of him to acquire vast amounts of gold illicitly. Blame the people who hail him when he speaks in the Forum of the 'new, wonderful good society' which shall now be Rome's, interpreted to mean 'more money, more ease, more security, more living fatly at the expense of the industrious.' Julius was always an ambitious villain, but he is only one man."

Does that talk of a "wonderful good society" remind you of 1965 and its "Great Society"?

I am not sure just where this country is going nor what life in America will be like five, ten, or fifty years from now. But it's clear that the old ideas of obedience to law, public thrift and common honesty, the old laws of supply and demand, and the old concepts of local self-government and individual responsibility have been discarded.

And it staggers the imagination to contemplate the changes which have occurred in the last thirty years. Our manner of government and our way of life are, for the United States, new and novel, with little in common with what has gone before. Our forefathers would be astounded by the insidious encroachments of centralized government in our everyday life.

Government is in the business of housing the people, in prescribing the hours we can work, with whom we

must work, the salaries we are paid and the tax to be withheld from that salary, the schools our children can go to and with whom they must sit and play, the highways we can drive on, how and where our food is grown and processed. The government concerns itself with the products you buy, the conditions under which they are manufactured, the manner in which they are advertised; the kind, the shape, and the size of the package in which they are offered; and how they are labeled. It is meddling with your health, your general welfare, your old age and your retirement, your security after retirement, your savings and the banks in which you place your savings; the conduct of your city, its police department and its department of health; the conduct of the affairs of your state, its law enforcement, its elections, the composition of its legislature; and every other facet of your life, private and public.

But the people of this country may like all this - to say the least, they have asked for it. They have elected the public officials who brought it about and they sit around with their tin cups waiting for more. If that's what a majority of the people of this nation want, those of us who disagree can't complain. The majority has the right to change our form of government if it wishes.

But one unfortunate aspect is that, once the die is finally cast, it will be too late to change our minds; it's altogether unlikely we could then ever reestablish the kind of government, the kind of independence and individuality our forefathers conceived and anticipated for posterity. We will have come too far and given up too much.

For that reason it is important that we give some thought to what is happening and reach some conclusions about what we'd like our future to be. We must count the cost of all the politically inspired humanitarian claptrap and be sure we're willing to pay the price in freedom, liberty, and independence.

The cause of sound government is not without a feeble hope. There is an overriding suspicion and uneasiness. The taxpayers complain of the complexities and the inequities fostered by internal revenue; the farmers complain of regimentation; the lawyers complain of the federal judiciary and its whimsical construction of the Constitution; the police deplore the judicial pampering of the criminals; citizens generally are alarmed by the government stirring up of the caldrons of racial hate; students of government seeking the truth are handicapped by managed news and the dominance of news media by the extreme liberals; many are apprehensive of the coddling of communists in high office and their people generally resent America's subordination to the United Nations and the waste of multiple billions on red satellites.

Well, we ask, in the light of the precarious situation what can we do? The first thing to decide is whether we want to live in a constitutional Republic or under a socialistic despotism. Theoretically, I suppose the vast majority would say they prefer constitutional government, but, as a matter of truth, that same majority is unwilling to jeopardize the spurious but temporary prosperity linked to current socialistic practice. Indeed, it may be we are irrevocably committed - too many of us have sold the future for the hope of free medical care, free college education, social equality, and security against poverty.

But, if you are concerned, I suggest you assess the responsibility for what's happening in government. If you are honest with yourselves you will admit we cannot blame the weak Congress or the bureaucrats, the tax gatherers or the judges or the communists - the responsibility must rest upon our own shoulders.

And while it's obvious that our conduct of public affairs under both political parties has long been lacking in the forthrightness and courage so essential to our independence, we cannot take the easy way out and charge the nation's ills to the ADA, the Bobby Bakers, or the Supreme Court. To put it simply, you and I and the people generally have been negligent in attention to our public business.

In good conscience, we cannot say the federal encroachments upon our rights and the rights of the states have come with any surprise. We have been warned and warned again. Two thousand years ago Cicero told us what to expect, when our ancestors were considering the adoption of the Federal Constitution for the new Republic. Patrick Henry, distrusting a central government, with true and unerring foresight, told

the people to "be extremely cautious, watchful, jealous of your liberty. Instead of securing your rights, you may lose them forever." He said, "there will be no checks, no real balances in this government," and looking ahead to 1965, he said "this government will * * * destroy the state governments and swallow the liberties of the people."

George Mason was fearful of centralization and thought there was a very real danger of losing all the Revolution had gained. He said that a consolidated government "is totally subversive of every principle which has hitherto governed us."

William Grayson was suspicious of the proposed Supreme Court. He said, "this court has more power than any court under heaven..." George Mason said the creation of the court would result in the destruction of state governments because, in the absence of restraint, the court "will be the judges of how far their law will operate."

Benjamin Franklin, after the Constitution was adopted, anticipating a people negligent in safeguarding their rights, said he thought our government would be well administered for a few years but that it "can only end in despotism."

At the conclusion of his two terms as President and in the light of his experience, George Washington thought the people of the future should be warned of the dangers inherent in an unrestrained Supreme Court - he said; "If * * * the distribution * * * of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation: for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed."

Thomas Jefferson foresaw the evils of judicial encroachment when, in effect, he said the Court, under its philosophy, made the Constitution a mere thing of wax to be twisted into any form they pleased; that to consider the Judges the ultimate arbiter of the Constitution would place us under the despotism of an oligarchy.

Some years later Lord Macauley, the English historian, after a careful study of our government and our Constitution warned the American people "Your Constitution is all sail and no anchor. Either Caesar or Napoleon will seize the reins of government with a strong hand, or your Republic will be as fearfully plundered and laid waste by the barbarians in the twentieth century as the Roman Empire was in the fifth - with this difference, that the Huns and Vandals who ravaged the Roman Empire came from without, and your Huns and Vandals will have been engendered within your own country by your own institutions." It is reasonable to assume he thought the Supreme Court was one of the institutions which would destroy us from within.

Abraham Lincoln thought it necessary to tell the people: "If the policy of the government upon vital questions affecting the whole people is to be irrevocably fixed by the decisions of the Supreme Court, the people will have ceased to be their own rulers, having...practically resigned their government into the hands of that eminent tribunal."

Robert Moses had this to say the other day: "We are living in a second American Revolution, as critical as the first one which established our nation * * * the Supreme Court now legislates and executes * * * It now by-passes the state courts and delegates to lower federal courts authority to tell the states what to do and how to do it * * * the states are reduced to peonage * * * until we change our Constitution, any five judges out of nine - distinguished men no doubt but political accidents not chosen by the people - are ruling the country and determining its future."

No, we cannot have been surprised by what has happened because, from our earliest days, we have been on notice it would happen. We, very simply, have refused to heed the warnings or to acknowledge that our

freedoms can be preserved by vigilant action and not otherwise. We have refused to acknowledge that bad government and bad public officials are but the reflection of ourselves as we have cast our votes - that the elected official is nothing more nor less than the instrumentality through which we express our will.

The whole trouble is that, in our civic stupor, we have forgotten that major policies, whether the gift of our substance to the communists or the regimentation of industry, agriculture, business, and the professions, require either the approval or acquiescence of the citizens of this country. What has been done, both that which has contributed to our stability and that which has endangered our future, has been with our consent. But I should tell you that the time is growing short. We must make a choice between the form of government conceived by those who captured our freedoms from Great Britain in the Revolution and this new form of government, a centralization, advocated and practiced by the left-dealers. Whether this nation is to be governed by the rule of law, under the Constitution, or the rule of man, unfettered by any restraint, constitutes the most vital problem of our time.

It is no longer of first importance whether we collectivize the professions or bankrupt the nation in abolishing poverty or in supporting our enemies abroad - the vital question, the question, in the face of which all others fade to insignificance, is whether we save the Constitution of the United States and the Republican form of government established by it.

If we can succeed in that respect and retain the right to elect the Congress and the President, all of us, the timid and the brave, the generous and the greedy, the conservatives, the liberals, and the middle gender moderates, can live with wisdom and folly, frugality and waste, the ADA socialists, and the crafty politicians. But, and never forget it, we cannot exist as a free people nor our nation as a Republic without a Constitution, observed in fact and not in the breach.

Whether the nation moves even further to the left as a socialistic despotism or is re-established as a Republic depends entirely upon the will of the majority. The answer does not hang upon whether you are liberal or conservative, a Democrat or a Republican - the answer, the sole answer, is whether you believe in and are resolute in trying to save the Constitution - as it was written and intended - upon whether you are determined to elect public officials who believe in that Constitution and are willing to boot them out of office without ceremony if they falter in their conviction.

You must face the fact that we have spent thirty years setting up the machinery to destroy that Constitution, and it will take dogged determination and constant, unwavering purpose to save it. You will have to reckon with the human inclination to avoid unpleasant facts. We are reluctant to admit our conversion to socialism or that the Supreme Court has usurped the rights of the Congress to legislate.

But we must admit that many people, many splinter groups, approve one or the other of the encroachments by the Supreme Court upon the rights of the majority. The Negroes are happy in the belief that the Brown decision established superior rights for them over the majority; the criminals are happy with the Mallory and Escobedo decisions because of the great advantage gained over the law enforcement officers and society in general; the communists thoroughly approve the Schware, Konigsberg and the Slochower cases which insure their right to infiltrate the legal profession and the schools. The labor unions like the decisions which gave to them enormous advantages. The urban politicians like the reapportionment decisions which insure their control of the state houses and the Congress.

Some of the changes made in the Constitution by judicial fiat were useful. Some, I would actively support in the political arena, but, as George Washington advised us, they should come in the manner prescribed by the Constitution and not through the unconstitutional usurpation by a court not subject to the vote of the people.

But you must remember that, by coddling particular self-interest groups, one after the other, the "rule by man" forces have built a strong following - a following which is active, vocal and organized.

The devotees of the "rule by man" theory include the moderates, the ADAers, most of labor, practically all of the minorities, many ministers, and many of the business and professional world. But I do not believe the tin-cup crowd constitutes a majority of the people of this country.

The simple majority, and I emphasize the word simple, composed of decent, ordinary businessmen, doctors, farmers, mechanics, preachers, and just people, does not realize how it has been duped. The honest fellow has always been an easy mark - the easiest to rob.

The simple majority is slow to anger. They are not given to sit-downs and sit-ins, to placards and to violence and to hate. But neither is that majority watchful of its own rights and the freedoms it inherited from brave ancestors. The majority is slow to express its opinion - slow to write the Congressmen or the President or the Supreme Court or the newspaper; it is, because of its supinely acquiescent attitude, slow to stand up and be counted.

If you, per chance, are among those who would rather be governed by constitutional law than by the whims of men unfettered by restraint, I suggest that the war will have to be fought on a wide front. You can't win with brush fights in special area. You must join and coordinate your efforts with the professions, with business and industry, with agriculture and all facets of American society concerned with the preservation of personal liberty. The centralizers can lick the isolated groups, but they could not defeat a sustained drive by the consolidated believers in constitutional government.

As a conservative, you should scrutinize every political candidate, at whatever level, and support the man who believes in our traditional form of government. You should examine every major governmental proposal and express your convictions at the ballot box and by letter, telegram, and in person. You should devote the same degree of thought and attention to your public business as you give to your personal affairs.

If you are a liberal, you should insist upon a Republican form of government. You should oppose every invalid executive order and shout from the housetops against the Supreme Court of the United States every time it arrogates to itself the power to write new law and to rewrite the Federal Constitution. You should remember that the historic method of stamping out liberalism is to undermine constitutional government and substitute the rule of man. You should remember that in Russia and Germany, in Italy and Red China, the liberals were promised more liberality and more freedoms - that the promisors promised fast action by fiat. They said, as our Supreme Court now says, let's do these good things now - let's not wait for the slow processes of the law.

If you are an ADA left-winger, you should insist upon utopia under the law, not by executive order. You should insist upon the right to live in Mr. Gotrock's house on the beach, the right to a free college education for your children, your right as a Protestant to join the Knights of Columbus - but you should never give Big Brother the power to confer those rights by ukase. Why? Because when the President or the Supreme Court usurps the power to give you something to which, under the law, you are not entitled, the President or the Court can, with equal ease, usurp the power to take from you that to which you are entitled.

If you are one of the American minorities and unhappy with your race, you should exert every effort to improve your position; you can aspire to the social organizations of the other races and endeavor to pull down distinction and level off all differences. But, being knowledgeable in history, you should do all these things under constitutional law. You ought never urge the illegal use of the army in your behalf because, when you have lost your popularity as a cause and are no longer needed at the ballot box, the President can use that same army illegally against you. You should remember vividly, how, in other countries, where constitutional government was abolished, minorities were cooked in the gas ovens or deep frozen in Siberia.

And if I were a left-wing newspaperman wedded to socialism, hating wealth and the wealthy, I would do my writing behind America's constitutional guaranty of free speech. I would emulate the feist dog and bark mightily, but from behind the strong fence of constitutional protection. I would remember only too well how freedom of the press and freedom of those who write for the press have been curtailed in those countries where man has risen above the law. Each morning I would remind myself to remind all my left-wing doctor, preacher, teacher, and racist friends that only under a constitutional form of government, where the rights of the individuals are protected, can we live and breathe and preach and write our thoughts; that under centralized power our only free choice will be to write and preach and teach as Big Brother tells us or to go dig salt in the mines.

But what would you do if your aim is for a dictatorship or a communistic takeover? How would you go about weakening the fiber of the country? You would know that, given a fair choice between a representative Republic and a dictatorship, the vast majority of the people in this country would vote against centralization.

No, your road to successful takeover would involve beguiling the people with handouts, creating false sense of security and, step by step, the dishing out of benefits with one hand and the lifting of liberties with the other. You would encourage the issuance of invalid executive orders, all in the name of humanity to please large segments of the voters. You would persuade the judiciary to ignore constitutional restraint and, in the beginning at least, issue invalid decisions in favor of the so-called downtrodden of our population and, of course, contemporarily, you would have the do-gooders demonstrate and create strife and, in every way possible, debunk and belittle the principles upon which the country grew and prospered and became the first nation of the earth. This prescription, faithfully followed, is likely of success under all conditions and, absent intelligent opposition, can be guaranteed.

These are not just theoretical abstractions - that's the way it's been done throughout history, beginning with Greece and Rome, on down through Russia, Hitler's Germany, Mussolini's Italy, and Peron's Argentina.

But there's a great difference in the composition of nationalities. Three or four hundred years ago the English, pushed to the wall by the power-spawned rule of the Star Chamber courts, pushed back and recaptured their rights. The Russian people, in sheep-like docility, have submitted. The melting pot of America seems content and complacent. Its sycophantic Congress, reflecting public acquiescence, is grovelling at the feet of the President. Its Democratic party has been captured, and its Republican party is without policy or guidance. We appear to be drunk on benefits and slogans, rushing lightheartedly along to self-destruction.

But perhaps all this is in keeping with natural law. The children of Hamelin followed the Pied Piper to ruin, the people of Germany and Italy followed Hitler and Mussolini, the lemmings of Norway rush to the sea to drown, and the grunions of the West Coast rush from the sea to flop on the beach and die. The Roman Republic was destroyed when the urban leaders pampered its populace with free handouts...Perhaps Benjamin Franklin knew what he was talking about when he told the young nation, after it had adopted its Constitution, in substance, that they had gained a free and independent nation but did not have the common sense to keep it.

Pamphlet No. 1047, March 1996